

ORIGINAL

BRUNENKANT & HASKELL, LLP

Attorneys at Law
805 15th Street, N.W., Suite 1101
Washington, D.C. 20005
P: (202) 408-0700
F: (202) 408-5959



February 27, 2004

VIA HAND DELIVERY

Barbara N. McKee, Director
Coal and Power Import and Export Activities
Office of Fossil Energy
U.S. Department of Energy
Forrestal Building
1000 Independence Avenue, S.W.
Washington, DC 20585

Re: *Intercom Energy, Inc.*, Docket No. EA- 289
Application for Authorization to Transmit Electric Energy to Mexico

Dear Ms. McKee:

Enclosed for filing are the original and two copies of the *Application of Intercom Energy, Inc. for Authorization to Transmit Electric Energy to Mexico*. Pursuant to 10 C.F.R. § 205.309, also enclosed is a check for \$500.00

Please contact James W. Moeller at (202) 408-0700 should you have any questions with respect to this application. Thank you for your kind assistance.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Jon L. Brunenkant".

Jon L. Brunenkant
Attorney for
Intercom Energy, Inc.

Enclosures

**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY**

Intercom Energy, Inc.

)
)
)

Docket No. EA-

289

**APPLICATION OF INTERCOM ENERGY, INC.
FOR AUTHORIZATION TO TRANSMIT ELECTRIC ENERGY TO MEXICO**

Pursuant to Section 202(e) of the Federal Power Act, 16 U.S.C. § 824a(e), and 10 C.F.R. §§ 205.300-205.309, Intercom Energy, Inc. ("Intercom") herewith files this Application for a blanket authorization from the U.S. Department of Energy ("DOE") to transmit electric energy from the United States to Mexico.

I. DESCRIPTION OF APPLICANT

Intercom is a California company with its principal place of business in Chula Vista, California. Intercom is a subsidiary company of Intercom Energy USA, also a California company with its principal place of business in Chula Vista, California. Intercom owns or controls no electric generation or transmission assets or natural gas transportation or distribution assets in the United States or in Mexico. In addition, Intercom has no franchised electric power service area.

On December 20, 2001, Intercom was authorized by the Federal Energy Regulatory Commission ("FERC") in Docket No. ER02-267-000 to market and broker electric energy and capacity at wholesale in interstate commerce at market-based rates and to engage in related services (Attachment A). Intercom intends to purchase surplus electric energy from electric utilities and federal power marketing agencies, within the

meaning of Section 3(22) and Section 3(19) of the Federal Power Act, 16 U.S.C. § 796(22) and § 796(19), and to export this energy to Mexico.

II. COMMUNICATIONS

All communications and correspondence with respect to this Application should be directed to:

Ernesto Pallares
Chief Executive Officer
Intercom Energy, Inc.
303 H Street, Suite 401
Chula Vista, CA 91910
T: (619) 946-5021
F: (619) 946-5061
e-mail: ernestopallares@yahoo.com

Jon L. Brunenkant
James W. Moeller
Brunenkant & Haskell, LLP
805 15th Street, N.W., Suite 1101
Washington, D.C. 20005
T: (202) 408-0700
F: (202) 408-5959
e-mail: moeller@bh-law.com

Daniel J. Mogin
The Mogin Law Firm, P.C.
110 Juniper Street
San Diego, CA 92101
T: (619) 687-6611
F: (619) 687-6610
e-mail: dmogin@moginlaw.com

III. JURISDICTION

No other known federal, state or local government, besides the FERC, has jurisdiction over the activities to be taken under the authorization sought in this Application.

IV. TECHNICAL DISCUSSION OF PROPOSED ACTIVITIES

Under Section 202(e) of the Federal Power Act, 16 U.S.C. § 824a(e), the DOE will issue a blanket authorization to export electric energy from the U.S. to Mexico or to Canada upon a determination that (i) because sufficient generation resources exist, the proposed export of electric energy will have no adverse consequence for the maintenance of adequate generation resources in the U.S. and that (ii) the proposed export of electric

energy will have no adverse consequence on the operation of regional transmission systems. For the reasons herein discussed, the DOE should make these two determinations.

In connection with its power marketing activities, Intercom seeks a DOE blanket authorization to export electric energy to Mexico. At this time, Intercom has no agreements in place to export electric energy to Mexico. Intercom intends to purchase electric energy from electric utilities and federal power marketing agencies, within the meaning of in Section 3(22) and Section 3(19) of the Federal Power Act, 16 U.S.C. § 796(22) and § 796(19), and to export this energy to Mexico. By definition, this power will be surplus to the systems of those electric utilities and federal power marketing agencies and thus will have no adverse consequence for the maintenance of adequate generation resources in the U.S. *Enron Power Marketing, Inc.*, Order No. EA-102 (1996). At this time, Intercom is engaged in negotiations of service agreements with these companies for the use of those transmission facilities.

Intercom owns or controls no electric transmission assets. Thus the proposed export of electric energy will have no adverse consequence on an Intercom transmission system. In addition, the proposed export will have no adverse consequence on the operation of regional transmission systems. Intercom proposes to export electric energy to Mexico via the transmission facilities detailed in Exhibit C to this Application. These facilities are owned by San Diego Gas & Electric Company ("SDG&E"), El Paso Electric Company (El Paso), Central Power & Light Company ("CP&L"), and the Comision Federal de Electricidad ("CFE")

The DOE may utilize the reliability analyses performed in recent export authorization proceedings that involved the transmission systems of SDG&E, El Paso, CP&L, and CFE to make the determinations required for an export authorization under Section 202(e) of the Federal Power Act. *Enron Power Marketing, Inc.*, Order No. EA-102 (1996). Intercom respectfully requests that the DOE utilize those reliability analyses to make those determinations and to conclude that the proposed export will have no adverse consequence on the operation of regional transmission systems.

Intercom agrees to abide by the export limits contained in relevant export authorizations that involve the transmission systems over which Intercom proposes to export electric energy to Mexico. The controls that are inherent in transactions that are in compliance with all requirements of the North American Electric Reliability Council ("NERC"), and the export limits imposed by the DOE on the transmission systems of SDG&E, El Paso, CP&L, and CFE, are sufficient to ensure that exports of electric energy by Intercom will not impede or tend to impede the coordinated use of transmission facilities within the meaning of Section 202(e) of the Federal Power Act.

Intercom will make all required commercial arrangements and will obtain all regulatory approvals required to effect the proposed electric energy exports. These arrangements will include (i) schedules for each transaction with the appropriate control area in compliance with all reliability criteria, standards, and guidelines of the NERC and member regional councils in effect at the time of export and (ii) transmission access over the facilities listed in Exhibit C.

V. PROCEDURES

Intercom proposes to abide by procedures similar to those imposed by the DOE in *Enron Power Marketing, Inc.*, Order No. EA-102 (1996). From time to time, Intercom will enter into agreements with third parties that involve the export of electric energy from the U.S. to Mexico. Prior to commencement of exports of electric energy under these agreements, Intercom will provide the DOE with written evidence that sufficient transmission access to complete the exports has been obtained. Intercom will make and preserve complete records with respect to the electric energy exported to Mexico and will provide the DOE with quarterly reports within thirty days after each calendar quarter. These quarterly reports will show the gross amount of kilowatt-hours of electric energy delivered and the consideration received for each month of the previous quarter and the maximum hourly rate of transmission.

VI. EXHIBITS AND ATTACHMENTS

The following Exhibits and Attachments are attached hereto:

Exhibit A – Agreements: Not Applicable

Exhibit B -- Legal Opinion of Counsel

Exhibit C -- Transmission Facilities for Exports

Exhibit D -- Non-U.S. Applicant Power of Attorney: Not Applicable

Exhibit E -- Statement of Corporate Relationship: Not Applicable

Exhibit F -- Operating Procedures: Not Applicable

Attachment A – FERC Order in Docket No. ER02-267-000

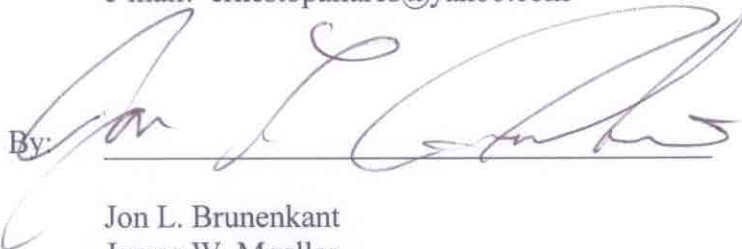
VII. CONCLUSION

WHEREFORE, Intercom respectfully requests that this Application for a blanket authorization to transmit electric energy to Mexico be considered on an expeditious basis and approved on terms substantially similar to the terms imposed in *Enron Power Marketing, Inc.*, Order No. EA-102 (1996).

Respectfully submitted,

INTERCOM ENERGY, INC.

Ernesto Pallares, Chief Executive Officer
Intercom Energy, Inc.
303 H Street, Suite 401
Chula Vista, CA 91910
T: (619) 946-5021
F: (619) 946-5061
e-mail: ernestopallares@yahoo.com

By: 

Jon L. Brunenkant
James W. Moeller
Brunenkant & Haskell, LLP
805 15th Street, N.W., Suite 1101
Washington, D.C. 20005
T: (202) 408-0700
F: (202) 408-5959
e-mail: moeller@bh-law.com

Daniel J. Mogin
The Mogin Law Firm, P.C.
110 Juniper Street
San Diego, CA 92101
T: (619) 687-6611
F: (619) 687-6610
e-mail: dmogin@moginlaw.com

Attorneys for Intercom Energy, Inc.

DATED: February 27, 2004

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

Intercom Energy, Inc.

)
)
)

Docket No. EA-_____

VERIFICATION

I, Ernesto Pallares, Chief Executive Officer, Intercom Energy, Inc., having knowledge of the matters set forth in the Application of Intercom Energy, Inc. for Authorization to Transmit Electric Energy to Mexico ("Application") dated February 20, 2004, hereby verify that I am authorized to execute this Verification and that the contents of the Application are true and correct to the best of my knowledge and belief.

By: _____

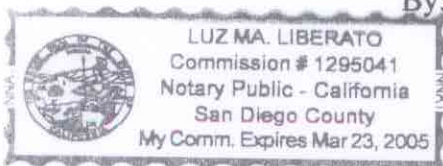
Ernesto Pallares, Chief Executive Officer
Intercom Energy, Inc.
303 H Street, Suite 401
Chula Vista, CA 91910
T: (619) 946-5021
F: (619) 946-5061
e-mail: ernestopallares@yahoo.com

DATED: February 18, 2004

Signed and sworn to before me, the 20TH day of February 2004.

By: _____

Luz M. Liberato



Notary Public

My Commission Expires: 3-23-2005

Exhibit B

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

Intercom Energy, Inc.

)
)
)

Docket No. EA-_____

LEGAL OPINION

This legal opinion is provided in support of the Application of Intercom Energy, Inc. for Authorization to Transmit Electric Energy to Mexico ("Application") dated February 20, 2004. I am an attorney at law, authorized to practice law in the State of California.

1. Intercom Energy, Inc. is a corporation, validly existing and in good standing under the laws of the State of California.
2. Intercom Energy, Inc. has full corporate power and authority to export electric energy to Mexico as requested in the Application.
3. We are informed and believe that Intercom Energy, Inc. has complied and intends to comply with all pertinent federal and state laws related to this application.

By: _____


Daniel J. Mogin
The Mogin Law Firm, P.C.
110 Juniper Street
San Diego, CA 92101
T: (619) 687-6611
F: (619) 687-6610
e-mail: dmogin@moginlaw.com

Attorney for Intercom Energy, Inc.

DATED: February 18, 2004

Exhibit C

United States Interconnections
with Mexico

Location	Voltage	Owner	Presidential Permit No.
Miguel, California	230 KV	San Diego Gas & Electric Co.	PP-68
Imperial Valley, California	230 KV	San Diego Gas & Electric Co.	PP-79
Diablo, Mexico	115 KV	El Paso Electric Co.	PP-92
Ascarate, Texas	115 KV	El Paso Electric Co.	PP-48
Brownsville, Texas	138 KV 69 KV	Central Power & Light Co.	PP-94
Eagle Pass, Texas	138 KV	Commission Federal de Electricidad	PP-50
Laredo, Texas	138 KV	Commission Federal de Electricidad	PP-57
Falcon Dam, Texas	138 KV	Commission Federal de Electricidad	PP-57

Attachment A

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

Office of Markets, Tariffs and Rates

Intercom Energy, Inc.
Docket No. ER02-267-000
December 20, 2001

Paul, Hastings, Janofshy & Walker LLP
1299 Pennsylvania Avenue
10th Floor
Washington, DC 20004-2400

Attention: William P. Scharfenberg
Counsel for Intercom Energy, Inc.

Reference: FERC Electric Rate Schedule No. 1, Original Sheet No. 1

Ladies and Gentlemen:

On November 5, 2001, Intercom Energy, Inc. (Intercom) filed an initial rate schedule under which Intercom proposes to engage in wholesale electric power and energy transactions at market-based rates. Consistent with Central Hudson Gas and Electric Company, et al., 60 FERC ¶ 61,106, reh'g denied, 61 FERC ¶ 61,089 (1992), waiver of the 60-day notice period is granted and Intercom's proposed market-based rate tariff is accepted effective December 5, 2001, as conditioned below. Any other waivers or authorizations requested in your application are granted to the extent specified in Appendix A. In addition, Intercom must comply with the reporting requirements and other requirements specified in Appendix A.

Intercom proposes to act as a power marketer, purchasing electricity and reselling it to wholesale customers. Neither Intercom nor any of its affiliates owns or controls generation and transmission facilities. Further, neither Intercom, nor any of its affiliates, owns or controls any sites for the construction of new generating capacity, interstate or intrastate natural gas transmission or distribution lines or facilities, or other essential resources or inputs that could be used to restrict market entry by competing power suppliers. The rate schedule outlines the terms and conditions in which Intercom will sell electric power and energy at market-based rates. Intercom states that no sale will be made pursuant to this rate schedule to any affiliate of Intercom which has a franchised

service territory for the sale of electricity without a separate rate filing under Section 205 of the Federal Power Act.

Recently, Intercom entered into a Firm Energy Purchase Agreement (FEPA) with the California Department of Water Resources (CDWR) to provide 200 megawatts of firm energy to CDWR over the next 20 months. The FEPA was negotiated to bolster California's near-term supply of electricity.

In its order issued in AEP Power Marketing, Inc., et al., 97 FERC ¶ 61,219 (2001), the Commission announced a new generation market power screen, the Supply Margin Assessment (SMA), to be applied to market-based rate applications on an interim basis pending a generic review of new analytical methods for analyzing market power. The SMA screen would be applied to all sales other than those in independent system operator (ISO) or regional transmission organization (RTO) markets with Commission-approved market monitoring and mitigation. The Commission has reviewed your submittal using the SMA for the California control area market. Intercom passes the SMA screen for this market.

Further, acceptance of Intercom's market-based rate tariff is subject to any tariff condition adopted by the Commission in Docket No. EL01-118-000, Investigation of Terms and Conditions of Public Utility Market-Based rate Authorizations, 97 FERC ¶ 61,220 (2001). Within 15 days of the date of issuance of an order adopting a tariff condition in Docket No. EL01-118-000, Intercom is directed to make a compliance filing in the instant proceeding to amend its tariff accordingly.

A notice was published in the Federal Register with comments, protests, or interventions due on or before November 26, 2001. No protests or adverse comments were received. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

This action is taken pursuant to the authority delegated to the Director, Division Tariffs and Rates - West under 18 C.F.R. § 375.307.

This acceptance for filing shall not be construed as constituting approval of the referenced filing or of any rate, charge, classification or any rule, regulation or practice affecting such rate or service contained in your tariff; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have

been or any which may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Intercom Energy, Inc.

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Sincerely,

Michael A. Coleman, Director
Division of Tariffs and Rates - West

Appendix A

Waivers and Authorizations

Any waivers or authorizations requested by the applicants are granted to the extent specified herein. Waiver of the prior or advance notice requirements, if requested, is granted. The applicant must comply with the reporting requirements specified herein.

If requested, the following waivers of the Commission's Regulations are granted:

- 1) Subparts B and C of Part 35, regarding the filing of rate schedules, except for Sections 35.12(a), 35.13(b), 35.15 (which requires applicant to file a Notice of Cancellation or Termination when it ceases its marketing activities), and 35.16 (which requires applicant to file a notice of succession whenever its name or operational control is changed).
- 2) Part 41, regarding accounts, records, and memoranda;
- 3) Part 101, regarding the uniform system of accounts; and
- 4) Part 141, regarding statements and reports, with the exception of 18 C.F.R. §§ 141.14, .15 (2001). Licensees remain obligated to file the Form No. 80 and the Annual Conveyance Report.

See Citizens Energy Corporation (Citizens Energy), 35 FERC ¶ 61,198 (1986), Citizens Power and Light Corporation (Citizens P&L), 48 FERC ¶61,210 (1989), and Enron Power Marketing, Inc. (Enron), 65 FERC ¶ 61,305 (1993), order on rehearing, 66 FERC ¶ 61,244 (1994).

The requirements of Part 34 of the Commission's Regulations regarding securities and assumptions of liabilities are statutory in nature and cannot be waived. If an applicant requested blanket approval under Part 34, a separate notice will be published in the Federal Register following this letter order, establishing a period during which protests may be filed. Absent a request to be heard in opposition within the period set forth in the notice, if the applicant has requested such approval, the applicant is authorized to issue securities and assume obligations or liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, compatible with the public interest, and reasonably necessary or appropriate for such purposes. See Citizens P&L and Enron.

Requests that the Commission waive the requirements of Part 46 of its Regulations regarding interlocking directors are denied. In Enron, the Commission stated that the requirements of Part 46 regarding interlocking directors are statutory in nature and may not be waived.

If requested, until further order of the Commission, the full requirements of Part 45 of the Commission's Regulations, except as noted below, are hereby waived with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving the applicants. Any such person instead shall file a sworn application providing the following information: (1) full name and business address, and (2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person. See Enron.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

Requests for disclaimer of jurisdiction over brokering activities, in which title to electricity is not taken, must be filed separately as a petition for a declaratory order accompanied by the appropriate filing fee. See Citizens Energy and Heartland Energy Services, Inc., 68 FERC ¶ 61,223 (1994).

Requests that the Commission waive annual charges for power marketers, under Part 382 of the Commission's Regulations, are denied. See Morgan Stanley Capital Group Inc. (Morgan Stanley I), 69 FERC ¶ 61,175 (1994) and Morgan Stanley Capital Group Inc. (Morgan Stanley II), 72 FERC ¶ 61,082 (1995).

Requests for waiver of the provisions of Section 203 regarding the disposition of jurisdictional facilities, the merger or consolidation of such facilities, or the acquisition of the securities of another public utility, are denied. The provisions of Section 203 are statutory in nature and may not be waived. See Resources Recovery (Dade County), Inc., 20 FERC ¶ 61,138 (1982). Requests for clarification that sales of accounts receivable are not dispositions of jurisdictional facilities and are, therefore, not within the scope of Section 203, are granted. See Enron. Requests for clarification that the assignment of a power sales contract constitutes a disposition of jurisdictional facilities under Section

203 are granted. See Enron. Requests for clarification that funds received from the sale of electricity are not jurisdictional facilities within the meaning of Section 203 are granted. See Citizens Energy. Also, requests for clarification that the requirements of Section 203 do not apply to the facilities of a power marketer that are not involved in the generation, transmission or sale for resale of electric energy, are granted. See Howell Gas Management Co., 40 FERC ¶ 61,336 (1987).

If requested, waiver of compliance with the requirements of Order Nos. 888 and 889 is granted. Waiver of compliance with the requirements of Order No. 888 is granted until such time as the applicant receives a request for transmission service. See Black Creek Hydro, Inc., et al., 77 FERC ¶ 61,232 at 61,941 (1996). Waiver of compliance with the requirements of Order No. 889 is appropriate because: (1) the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) the applicant is a small public utility that owns, operates, or controls an integrated transmission grid. See Midwest Energy, Inc., et al., 77 FERC ¶ 61,208 at 61,854 (1996).

Requests that the Commission waive its requirement that purchasers of electricity under market-based rate schedules certify that the purchase price was equal to or less than its avoided cost, are moot. The Commission eliminated the requirement in Louisville Gas & Electric Company, 62 FERC ¶ 61,016 (1993).

Requests for approval to reassign transmission capacity are found to be consistent with the Commission's requirements. See Southwestern Public Service Company, 80 FERC ¶ 61,245 (1997). Power marketers not requesting approval to reassign transmission capacity are informed that they are authorized to reassign transmission capacity pursuant to the Commission's order in Enron Power Marketing, Inc., 81 FERC ¶ 61,277 (1997).

Requests for approval to buy and sell firm transmission rights are found to be consistent with the Commission's requirements. See California Independent System Operator, Inc., 89 FERC ¶ 61,153 (1999).

Should an applicant or any of its affiliates deny, delay, or require unreasonable terms, conditions, or rates for natural gas fuel or services to a potential electric competitor in bulk power markets, then that electric competitor may file a complaint with the Commission that could result in the applicant's or its affiliate's authority to sell power

at market-based rates being suspended. See, e.g., Louisville Gas & Electric Company, 62 FERC ¶ 61,016 at 61,148 (1993).

If the applicant submitted a code of conduct, it is accepted if consistent with Appendix B which reflects requirements adopted in previous Commission orders. Any code of conduct inconsistent with Appendix B is rejected and in such case Appendix B has been designated as the applicant's code of conduct.

Reporting Requirements

Applicants who own generating facilities may file umbrella service agreements for short-term power sales (one year or less) within 30 days of the date of commencement of short-term service, to be followed by quarterly transaction summaries of specific sales (including risk management transactions if they result in actual delivery of electricity). For long-term transactions (longer than one year), applicants must submit the actual individual service agreement for each transaction within 30 days of the date of commencement of service. To ensure the clear identification of filings, and in order to facilitate the orderly maintenance of the Commission's files and public access to documents, long-term transaction service agreements should not be filed together with short-term transaction summaries. For applicants who own, control or operate facilities used for the transmission of electric energy in interstate commerce, prices for generation, transmission and ancillary services must be stated separately in the quarterly reports and long-term service agreements.

Applicants who do not own generating facilities must file quarterly reports detailing the purchase and sale transactions undertaken in the prior quarter (including risk management transactions if they result in actual delivery of electricity). Applicants who are power marketers should include in their quarterly reports only those risk management transactions that result in the actual delivery of electricity. On May 27, 1999, the Commission issued an order in which it modified the reporting requirements for long-term transactions applicable to public utilities without ownership or control over generation or transmission facilities that are authorized to sell power at market-based rates (power marketers). Southern Company Services, et al., 87 FERC ¶ 61,214 (1999), reh'g pending, (Southern). Specifically, with respect to any long-term transaction agreed to by a power marketer after 30 days from the date of issuance of a final order in the Southern case, the power marketer must file a service agreement with the Commission within 30 days after service commences, rather than reporting transactions thereunder in its quarterly transaction summaries. Requests for different reporting requirements are denied.

The first quarterly report filed by an applicant will be due within 30 days of the end of the quarter in which the rate schedule is made effective.

Requests to file quarterly transaction reports on a confidential basis are denied. See National Electric Associates L.P., 50 FERC ¶ 61,378 (1990). See also, AIG Trading Corporation, 71 FERC ¶ 61,148 (1995), LG&E Power Marketing Inc., 68 FERC ¶ 61,247, and Enron.

Each applicant must file an updated market analysis within three years of the date of this order, and every three years thereafter. The Commission reserves the right to require such an analysis at any time. The applicants must also inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. These include, but are not limited to: (a) ownership of generation or transmission supplies; or (b) affiliation with any entity not disclosed in the applicants' filing that owns generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Alternatively, the applicants may elect to report such changes in conjunction with the updated market analysis required above. Each applicant must notify the Commission of which option it elects in the first quarterly report filed with the Commission.

APPENDIX B

[APPLICANT]

SUPPLEMENT NO. _ TO RATE SCHEDULE NO. _

STATEMENT OF POLICY AND CODE OF CONDUCT WITH RESPECT TO THE RELATIONSHIP BETWEEN [POWER MARKETER] AND [PUBLIC UTILITY]

Marketing of Power

1. To the maximum extent practical, the employees of [Power Marketer] will operate separately from the employees of [Public Utility].
2. All market information shared between [Public Utility] and [Power Marketer] will be disclosed simultaneously to the public. This includes all market information, including but not limited to, any communication concerning power or transmission business, present or future, positive or negative, concrete or potential. Shared employees in a support role are not bound by this provision, but they may not serve as an improper conduit of information to non-support personnel.
3. Sales of any non-power goods or services by [Public Utility], including sales made through its affiliated EWG's or QF's, to [Power Marketer] will be at the higher of cost or market price.
4. Sales of any non-power goods or services by the [Power Marketer] to [Public Utility] will not be at a price above market.

Brokering of Power

To the extent [Power Marketer] seeks to broker power for [Public Utility]:

5. [Power Marketer] will offer [Public Utility's] power first.
6. The arrangement between [Power Marketer] and [Public Utility] is non-exclusive.
7. [Power Marketer] will not accept any fees in conjunction with any Brokering services it performs for [Public Utility].